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No. 86-786

In The

Supreme Court of the United States

October Term, 1986

BERNARD UEHLEIN, et al.,

Respondents,

JACKSON NATIONAL LIFE INSURANCE COMPANY, et al.,

Respondents,

Appeal of:

SHIRLEY A. MUELLER and GREGORY A. JENNINGS, Executor of the Estate of Robert V. Mueller, Deceased,

Petitioners.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

Whether the District Court's denial of Petitioners' Motion For Judgment on Interpleader Counterclaims, and Order Terminating Escrow and Directing Court-Appointed Escrowee to Distribute and Turn-Over Insurance Proceeds and Earnings thereon is an order appealable under 28 U.S.C. Section 1291 or 1292.

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Respondents, ARTHUR J. TONNESEN and ELAINE D. TONNESEN, JOSEPH and MARY SHEKLETON, THOMAS WEISBRUCH, DAVID E. and KIM E. BORN, GUS B. and BILLIE L. NEILL, LYNN BLAND, and JAMES and CAROLYN HANSEN, (herein referred to as "Investors") respectfully submit this Memorandum

in response to the Petition for Writ of Certiorari filed by Petitioners SHIRLEY A. MUELLER (herein "Ms. Mueller") and GREGORY A. JENNINGS, as Executor of the Estate of Robert V. Mueller, deceased.

OPINION BELOW

On June 25, 1986, the United States Court of Appeals for the Seventh Circuit dismissed this appeal for lack of jurisdiction and the opinion is officially reported at 794 F.2d 300(CA 7 1986).

JURISDICTION

Petitioners allege that jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case presents the question of whether the district court's order of April 24, 1986 is an appealable order pursuant to 28 U.S.C. sections 1291 and 1292(1985). The Petitioners have also raised peripheral issues concerning the United States Constitution, Amendment V and 18 U.S.C. secs. 1961-1968(1985).

STATEMENT OF THE CASE

Since 1979, the Investors had been solicited by Robert V. and Shirley A. Mueller to invest in tax-sheltered medical and hospital equipment. As a result of the Muellers' repeated representations of the profitability and safety of these medical equipment investments, Investors continued to invest and reinvest substantial sums of money with the Muellers and New Horizon Enterprises, Inc. In actuality, the Muellers acted in concert to fraudulently obtain the Investors' money by using one Investor's money to pay another Investor his or her profits and investment principal. Over the course of several years, the Muellers maintained this "Ponzi" or "kiting" scheme without making a single legitimate investment in medical or hospital equipment.

On July 5, 1984, Robert V. Mueller died in Texas of a self-inflicted gunshot wound, leaving Ms. Mueller sole beneficiary on three life insurance policies with the Jackson National Life Insurance Company, Investors Guaranty Life Insurance Company and General American Life Insurance Company, totaling 3.6 million dollars. After Robert Mueller's suicide, the Investors learned that their investments made with Robert and Shirley Mueller had been fraudulently diverted by Mr. & Mrs. Mueller for their own personal use, including the making of payments on the life insurance premiums of the above policies.

In October, 1984, a group of investors filed a lawsuit in the United States District Court for the Northern District of Illinois against the Estate of Robert V. Mueller; Shirley A. Mueller; New Horizon Enterprises, Inc.; and the three life insurance companies, Jackson National Life Insurance Company, Investors Guaranty Life Insurance Company and General American Life Insurance Company. The Complaint alleges three counts against the above-mentioned Defendants. Count I alleges that Petitioners through their corporation, New Horizon Enterprises, Inc., conspired and combined to defraud the Investors of their funds in violation of the federal *Racketter Influenced and Corrupt Organizations Act* (herein "RICO"). 18 U.S.C. Sections 1961 - 1968, 1962(c), 1963(a)(i).

Counts II and III of the Complaint are pendent state claims that allege further violations of the *Illinois Consumer Fraud Act.* (*Ill. Rev. Stat.,* ch. 121 1/2, Section 262(1986). The Complaint requests money damages, reasonable costs, attorneys fees, as well as an accounting of the assets of Petitioners' solely owned corporation, New Horizon Enterprises, Inc.

In January, 1985, the three Defendant insurance companies filed Counterclaims for Interpleader Relief and moved the District Court to appoint an escrow agent to accept deposit of the 3.6 million dollars in life insurance

proceeds at issue in this case. On May 25, 1985, the district court appointed Exchange National Bank as escrow agent and the deposited funds were to be invested by the bank during the pendency of this litigation.

In December , 1985, a full fourteen months after the filing of the lawsuit, and eleven months after the filing of the interpleader actions, the Petitioners presented the following four motions to the district court; 1) Motion for Judgment on the Interpleader Claims and Termination of Escrow; 2) Motion for Severance; 3) Motion for an Order terminating Escrow and Directing Court-Appointed Escrowee to Distribute and Turn Over Insurance Proceeds and Earnings Thereon; and 4) Motion for a Prompt Hearing and beseeched the court to release the escrowed funds due to the financial hardship on the part of Ms. Mueller and her "minor daughters".[1] The Investors filed a Response to Petitioners' Motions on and the district court denied Petitioners' motions on April 24, 1986. However, the district court indicated that it would entertain a motion by Petitioners for a *partial* turn-over upon an adequate showing of hardship on the part of Ms. Mueller and her "minor daughters". The district court refused to certify this issue for immediate appeal to the United States Court of Appeals for the Seventh Circuit as provided under Section 1292(b) and pre-trial discovery continued as ordered.

Petitioners filed a Notice of Appeal ordered on May 7, 1986 with the Seventh Circuit, challenging the district court's denial of their motion to turn-over the assets. First, Petitioners argued that the district court's denial of their motion was *in effect* a denial of an injunction which is appealable pursuant to 28 U.S.C. Section 1292(a)1. Second, Petitioners argue that their Motion for Turnover constituted a request for a mandatory permanent injunction,

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[1] In actuality, Ms. Mueller only had one daughter currently under the age of eighteen.

thus empowering the Court of Appeals to accept their immediate appeal pursuant to Section 1292. The Seventh Circuit dismissed the Petitioners' appeal for lack of jurisdiction on May 25, 1986 stating; 1) the Court's denial did not constitute an order reviewable as a collateral order doctrine under *Cohen vs. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 93 L.Ed.2d 1528, 69 S.Ct. 1221(1949); and 2) Mueller's Motion was not an "injunction" appealable under Section 1292. A review of the facts and circumstances of this case supports the Seventh Circuit's dismissal of this Appeal.

REASONS FOR DENYING THE WRIT

I. The District Court's April 24, 1986 Denial of the Petitioners' Motion For Full Turn-Over Is Not Appealable Under 28 U.S.C. Sections 1291 and 1292.

The sole question on appeal to this Court is whether the district court's order of April 24, 1986 denying Mueller's request to turn over the insurance proceeds deposited with a third-party escrowee. Sections 1291 and 1292 of the United States Code limit the appealability of district court orders to all final orders as defined in Section 1291 and a small number of interlocutory orders outlined in Section 1292. (28 U.S.C. Sections 1291 and 1292 (1985). In the Seventh Circuit's June 25, 1986 opinion in this matter, the Court ruled that the Petitioners had failed to demonstrate that the denial of the motion was appealable under either Section 1291 or 1292, prompting this Petition for a Writ of Certiorari on the part of the Petitioners.

It is well settled under law that there is no right to review by this Court, but is a matter of judicial discretion based on the reasons offered in support of review.

Petitioners have stated in their Petition that the Seventh Circuit's decision to dismiss this appeal creates a conflict among the circuits and must be reviewed. (Petitioners' *Brief* at pages 7-18). However, it is well

settled in *all circuits* and before this Honorable Court that orders of this nature are *not* appealable under either Section 1291 or 1292 and no such conflict exists. Therefore, this petition for review must be denied.

A. Section 1291

Section 1291 limits federal appellate court jurisdiction to all "final decisions" of the district courts of the United States. Congress intended to limit the jurisdiction of federal appellate courts to prevent the piecemeal appellate review of cases and to promote efficient and thorough judicial administration of cases. *United States vs. Hollywood Motor Car Co.*, 458 U.S. 263, 73 L.Ed.2d 754, 102 S.Ct. 3081(1982); *Firestone Tire & Rubber Co. vs. Risjord*, 449 U.S. 368, 66 L.Ed.2d 571, 101 S.Ct. 669(1981). "Final decision" is defined a district court decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment". *Catlin vs. United States*, 324 U.S. 229, 89 L.Ed.2d 911(1975). The order before this court does *not* constitute a final decision under Section 1291.

Petitioners in their Motion for Turn-Over requested the district court to order the third-party escrowee, Exchange National Bank, to release the 3.6 million dollars of insurance proceeds *prior* to any decision on the merits of the Investors' claims. These insurance proceeds had been deposited by Defendant insurance companies after the filing of their interpleader counterclaims and pursuant to a May 25, 1985 court order designating Exchange National bank as the third-party escrowee. The district court placed these funds in escrow after reviewing the Investors' complaints which detailed the fraudulent medical investment scheme of the Muellers and how they had diverted these funds for their benefit, using part of the funds to pay premiums on the life insurance policies on the life of Robert V. Mueller. As an active participant in this investment scheme, Ms. Mueller would receive 3.6 million dollars as a

result of her fraudulent representations. The district court, fully cognizant of the Investors' claims and Petitioners' denials, deposited the money in escrow where it earns interest to this day pending a final outcome to this litigation. In the absence of a final determination of the merits of the Investors' claims against the Petitioners, the district court's April 24, 1986 order is not a final decision as mandated by this Court in *Catlin, supra.*

An exception to the "final decision" requirement of Section 1291 was articulated by this Court in *Cohen vs. Beneficial Loan Corporation,* 337 U.S. 541, 93 L.Ed.2d 1528, 69 S.Ct. 1221(1949). This Court recognized that there exists a *small class* of orders that are separable from, and collateral to, the primary rights asserted by the parties in any action. 337 U.S. 541, 546. At times, it is necessary to rule these orders appealable due to their importance to the litigation, as well as their independent status to the primary cause of action. Thus led to the birth of the "collateral order" exception to the final decision rule of Section 1291.

This Court has ruled time after time that the collateral order exception is very narrow and must only be invoked where the rights involved will be irretrievably lost without immediate review. *Firestone, supra.* At a minimum an appealable non-final order under the collateral order doctrine must:

"1) conclusively determine the disputed question;

2) resolve an important issue completely separate from the merits of the action; and

3) be effectively unreviewable on appeal from a final judgment."

Coopers & Lybrand vs. Livesay, 437 U.S. 463, 57 L.Ed.2d 251, 98 S.Ct. 2454(1978).

In *Coopers & Lybrand, supra.,* the court ruled that a lower district court order decertifying a Rule 23 class

was not a final decision appealable under the collateral order exception to Section 1291. Plaintiff in *Coopers and Lybrand* filed a securities fraud action on behalf of all other similarly situated purchasers to recover money damages. The district court decertified the class and plaintiff-investor appealed its order arguing that the court's action sounded a "death knell" to the litigation since the plaintiff would find it "financially imprudent" to litigate his claim to final judgment without a possible group recovery. 437 U.S. 463, 468. The court refused to hold the order appealable under the collateral order doctrine. 437 U.S. 463, 475. This Court has reaffirmed the *Coopers & Lybrand* test in *Richardson-Merrell, Inc., vs. Koller,* 472 U.S.___, 86 L.Ed2d 340, 105 S.Ct.___(1985).

The Seventh Circuit's application of this Court's *Coopers & Lybrand* test in the instant case is totally consistent with the standards set by this Court and does not create a conflict among the circuits. Rather, the Seventh Circuit's decision in *Uehlein* is a reaffirmation of the basic tenets of law underlying the "final decision" requirement of Section 1291. To allow the Petitioners an opportunity to appeal this non-final interlocutory order without the proper district court certification would require an appellate court to review the merits of a case prior to any lower court decision. As Judge Easterbrook noted an "appellate court could not evaluate the district court's decision without deciding who is likely to prevail on the merits." *Uehlein, et al. v. Jackson National Life Insurance Company, et al.,* 794 F.2d 300, 302(1986).

First, the decision by the trial court to deny Petitioners' motion was not final on the issue of disbursement. The district court judge in denying the Petitioners' motion for a turn-over of *all* the proceeds currently held in escrow, stated that the Petitioners were free to petition him at any time for a *partial* disbursement from the escrow fund if indeed Ms. Mueller was facing a great financial hardship. The Petitioners declined to petition the court and

filed their Notice of Appeal with the U.S. Court of Appeals for the Seventh Circuit.

Second, Mueller has failed to demonstrate that the disbursement of the 3.6 million dollars in insurance proceeds currently on deposit with Exchange National Bank is independent of the merits of this case. The Investors' claims in this matter are against Ms. Mueller, the Estate of her deceased husband, Robert V. Mueller and their solely-owned corporation, New Horizon Enterprises, Inc. for the fraudulent representations made by all three Defendants with regard to the Investors' tax-sheltered investment of money in medical equipment. This action is *not* merely an attempt to seize a widow's assets to satisfy claims against her husband, but an action against a husband and wife team that conspired to fraudulently solicit funds from unsuspecting investors and divert these funds for their private use which included the payment of all life insurance premiums on the policies at issue. Possession of the escrowed funds is the heart of the Investors' claims, thus the order entered by the district court is not "collateral" in nature but a an attempt by Petitioners to obtain judgment prior to any ruling on the merits of this case.

Finally, the District Court's decision will not go unreviewed upon the entrance of final judgment of this matter. Petitioners requested the district court to issue an order vesting Ms. Mueller with total control of the insurance proceeds without any ruling on the merits of the Investors' claims to the money. This is the precise question at issue in the primary action of this case – who is entitled to these funds. To argue as Petitioners have, that the district court's order denying the disbursement of the escrowed funds is independent of the cause in chief, is unfounded. The party that wins on the merits of their claim will be entitled to recover the insurance proceeds plus any interest accrued during the pendency of the litigation.

Thus, the District Court's order denying the turn-over of the escrowed proceeds to Petitioners does *not* fall under the narrow collateral order doctrine under *Cohen, supra.* The sole allegations of irreparable hardship by Petitioner include the loss of money and the large expense involved in litigating this matter. (Petitioners' *Brief* at pages 5-6). The Court in *Richardson-Merrell, supra.* recently spoke to the Petitioners' concerns:

> "...the possibility that a ruling may be erroneous and may impose additional litigation expense is not sufficient to set aside the finality requirement imposed by Congress. (Citations omitted)... The *Coopers & Lybrand* test *looks not to the litigation expense imposed by a possible erroneous ruling, but rather to whether the right affected by the ruling can and should be protected by appeal prior to judgment.*" 86 L.Ed.2d 340, 350. (Emphasis added.)

The Investors state that Petitioners' claim to these proceeds are adequately protected and that the Petition for Writ of Certiorari must be denied.

As evidence of a conflict between the circuits, Petitioners cite to the Second Circuit case *In Re Feit & Drexler, Inc.*, 760 F.2d 406(CA 2 1985), in support of their request for immediate appeal alleging that the same identical interests are present in the instant case. *Feit* is totally distinguishable from this case on one very important point. In *Feit*, the district court's order that was appealed from was within the category of *injunctive orders* appealable under Section 1291 and 1292. The prejudgment relief sought by the wife in *Feit* took the form of a mandatory preliminary injunction. In the instant case, no such injunctive relief was requested. The Seventh Circuit stated specifically that the wife in *Feit* had established a final appealable order under Section 1292(a) 1. 760 F2d 406, 411. Thus, *Feit* is inapplicable to the facts of the instant case. See also; *Brown vs. Kerr-McGee Chemical Corporation*, 767 F 2d 1234(CA7, 1985), *cert denied*, 106 S.Ct

1378 (1986).

The Seventh Circuit's dismissal of Petitioners' appeal for lack of jurisdiction is in total compliance with the mandates outlined by this Court and certiorari should be denied.

B. Section 1292

Congress adopted Section 1292 as an exception to the 'final decision' limitation, and the statute provides appeal as of right from interlocutory orders of district courts "... granting, continuing modifying, refusing or dissolving injunctions." 28 U.S.C. Section 1292(a)1(1985). As an exception to the final decision requirement, Section 1292(a)1 has been narrowly construed by this Court. *Carson vs. American Brands, Inc.*, 450 U.S. 79, 67 L.Ed 2d 59, 101 S.Ct. 993(1981); *Baltimore Contractors, Inc. vs. Bodinger*, 348 U.S. 176, 99 L.Ed. 233, 75 S.Ct. 249(1955). The statute requires the litigant to 1) demonstrate a valid appealable interlocutory order under Section 1292(a)1; and 2) that the order would have a serious, perhaps irreparable, consequence without immediate review, *Carson, supra.* 450 U.S. 79, 86. Petitioner cannot establish either requirement under Section 1292(a)1, thus the district court's order in the instant case is not appealable under Section 1292(a)1.

Petitioners filed a Motion to Turnover Assets with the court in December, 1985, a full fourteen months after the original complaint was filed and twelve months after the filing of the interpleader counterclaims by the Defendant insurance companies. At no time did Petitioners file for an injunctive order appealable under Section 1292(a)1. Absent a valid interlocutory order that is appealable pursuant to Section 1292, Petitioners may not appeal the district court's order as a matter of right.

In addition, Petitioners have failed to demonstrate *any* serious or irreparable harm that would justify the piecemeal appellate review of her claim. The original

complaint was filed by the Investors in October, 1984. Interpleader counterclaims were filed by Defendant insurance companies in January, 1985, with the court's order depositing the insurance with Exchange National Bank issued on May 25, 1985. Yet Petitioners did not file their Motion for Turn-over until December, 1985 – some fourteen months after the original complaint. If the deprivation to Petitioner Mueller is so serious or irreparable, why did they wait fourteen months to request the funds be turned over? Petitioners' protestations of hardship and deprivation of the use of the insurance proceeds hardly constitutes "irreparable harm" when Petitioner will receive the entire amount plus interest if she is successful in defending this action. Historically, money damages are insufficient under law to establish irreparable harm. *Mulay Plastics, Inc. vs. Grand Trunk Western Railroad*, 742 F.2 369 (CA7 1984), *cert. denied*, 105 S.Ct. 1409 (1985). In the event she is successful at trial, Petitioner shall receive all of the proceeds plus interest, thus the inaccessibility of the proceeds to Ms. Mueller does not seriously or irreparably affect Petitioners' rights under law. *Switzerland Cheese Ass'n, Inc. vs. E. Harris' Market, Inc.*, 385 U.S. 23, 17 L.Ed. 2d 23, 87 S.Ct. 193(1966). Absent allegations of irreparable harm, Petitioner has no right to appeal the district court's order.

Section 1292(b) also permits the appeal of district court orders upon a finding by the judge that there exists 1) a controlling question of law present where a substantial ground for a difference of opinion exists; and 2) an immediate appeal of such order would materially advance the ultimate termination of the case. 28 U.S.C. Section 1292(b)(1986). All orders seeking jurisdiction under Section 1292(b) *must* demonstrate that the district court entered a certificate of appeal. In *Cooper vs. Lybrand vs. Livesay, supra,,* this Court reaffirmed the need for certification to *prevent* the unnecessary and piecemeal use of the appellate process:

> "Non-final orders could never be appealed as a matter of right. Moreover, the discretionary power to permit an interlocutory appeal is not, in the first instance, vested in the courts of appeals. A party seeking review of a non-final order must first obtain the consent of the trial judge. This screening procedure serves the dual purpose of ensuring that such review will be confined to appropriate cases . . . "

See also: *U.S. vs. 687.30 Acres of Land, More of Less, in Dakota and Thuston Counties, State of Nebraska*, 451 F.2d 667(CA 9 1971), *cert. denied*, 92 S.Ct. 1291(1971). Without a certified question by the district court, the appeals court has no jurisdiction. The district court refused to certify this order as appealable under Section 1292(b) stating that it was not a final determination on any issue before the court. No basis for appeal can be formed under Section 1292(b).

In sum, Petitioners have failed to establish that the district court's denial of their Motion to Turn-over the escrowed insurance proceeds is appealable under Section 1292. Accordingly, certiorari must be denied.

II. The District Court's April 24, 1986 Denial of the Petitioners' Motion For A Full Turn-Over Is Not in Violation of their Due Process Rights.

The sole issue on appeal before this Court is whether the district court's April 24, 1986 order refusing to turn over the escrowed money is a final appealable order under Sections 1291 and 1292 of the United States Code. Yet throughout their Petition, the Petitioners argue that the court has in some way deprived Ms. Mueller of her Fifth Amendment due process rights to these proceeds. *(Petition* at pages 7-25). As argued in Section IA and B of this Response, the order is *not* appealable under either Section 1291 or 1292 and the Seventh Circuit's dismissal of this appeal was perfectly consistent with the law as enunciated by this Court. Further arguments on the merits of the

Investors or the Petitioners' claims must wait until a decision on the merits by the district court has been issued. No decision on Ms. Mueller's rights as sole beneficiary of the life insurance proceeds has been made by the district court and her arguments are improper at this time.

In their Petition, it is argued that Ms. Muellers' status as sole beneficiary under her husband's life insurance policies is absolutely protected by Illinois law, specifically section 850 of the *Illinois Insurance Code. (Ill. Rev. Stat.* ch. 73, par. 850(1985). Section 850 exempts life insurance proceeds from "execution, attachment, garnishment, or other process, for the debts of the insured." The Petitioners have completely mischaracterized Ms. Mueller's position in this lawsuit as merely a conduit through which the Investors seek to obtain the insurance proceeds of her husband. That is not the case. Ms. Mueller is a party defendant in this action because she was an active and willing participant in the fraudulent scheme to deprive the Investors of substantial sums of money for the Muellers' private use. As such, the Investors are *not* mere creditors, but are seeking to recover their money which was obtained by Ms. Mueller as a direct result of her breach of her fiduciary duty to these investors to invest this money in medical and hospital equipment. Illinois law has fully recognized that such conspiracies are outside the ambit of Section 850. *Roth v. Kaptowsky*, 393 Ill. 484, 66 N.E.2d 664 (1946); *Callner v. Greenberg*, 376 Ill. 212, 33 N.E.2d 437 (1941).

In *Roth, supra.*, the Illinois Supreme Court ruled that a creditor could recover life insurance proceeds from a beneficiary when the action or judgment was against the insured and his beneficiary. The creditor had a judgment for $2,500.00 against both the insured and his wife. The insured died, leaving $6,644.41 of insurance money to his wife. Garnishment proceedings were instituted against his wife to recover the $2,500.00 judgment. The Illinois Supreme Court exempted this action from Section 850,

stating:

> "It is to be observed, however, that this section by its terms, relieves the proceeds of insurance policies, coming within the purview of the section, from the debts and liabilities of the insured. In this case the liability evidenced originally by the note and *subsequently by the judgment was against not only the (husband), the insured, but also (his wife), the beneficiary. Roth vs. Kaptowsky*, 66 N.E.2d at 668 (Emphasis added).

All of the cases cited by the Petitioners in support of Ms. Mueller's vested right to the insurance proceeds are distinguishable from this case. In *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 318 N.E.2d 52 (1st Dist. 1974) the insured's wife was not a party to the action or the lawsuit and involved a member of the insured's creditors. The same is true of the bankruptcy in *Vieth v. Chicago Title and Trust Co., el al.*, 307 Ill.App. 99, 30 N.E.2d 126 (3rd Dist. 1940). In *Travelers Insurance Company v. Daniels*, 667 F.2d 572 (CA 7 1981) the Seventh Circuit specifically noted that the beneficiary's rights to insurance proceeds are vested unless someone other than a named beneficiary can demonstrate an equitable right to the proceeds. 667 F.2d at 573. The Investors have clearly alleged that Ms. Mueller participated in the scheme to defraud and had use of the funds acquired by the fraudulent investment scheme. It is up to the district court to determine the merits of the Investors' and Petitioners' claims to these funds.

Finally, the Petitioners' assertion that the district court's order deprived Ms. Mueller of her "entitlement" to the insurance proceeds is completely without merit. As argued above, one of the central issues in this litigation is who is entitled to the insurance proceeds currently in escrow. Illinois law clearly provides that a beneficiary's interest will only vest when no other equitable claim to the proceeds is present. *Travelers Insurance*

Company vs. Daniels, supra. In addition, any judgment against Ms. Mueller will allow the Investors to recover from the proceeds of the insurance payable to her. *Roth v. Kaptowsky, supra.* Ms. Mueller does not have a clearly vested "entitlement" to these proceeds under Illinois law.

Fuentes v. Shevin, 407 U.S.67, 32 L.Ed.2d 556, 92 S.Ct. 1983(1972) requires that the plaintiff must demonstrate a substantial property interest in the goods or properly seized or no procedural due process violation will lie. In *Fuentes, supra.*, the petitioners challenged two states' replevin statutes which allowed the seizure of goods without a prior hearing. The parties in *Fuentes* had a demonstrable and substantial interest in the property seized, they had a right to *use* the goods. In this case, Ms. Mueller's rights to the ownership and use of the insurance proceeds are at *issue*, and she has no significant property interest in this money until a final adjudication of the Investors' claims has been reached.

Wherefore, the Petitioners' request for a writ of certiorari must be denied.

CONCLUSION

For the foregoing reasons, the Respondents, ARTHUR J. TONNESEN and ELAINE D. TONNESEN, JOSEPH and MARY SHEKLETON, THOMAS WEISBRUCH, DAVID E. and KIM E. BORN, GUS B. and BILLIE L. NEILL, LYNN BLAND, and JAMES and CAROLYN HANSEN, respectfully request that certiorari in this case be denied.

Respectfully submitted,

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